

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JORDAN H. MOORE,  
Plaintiff,

-against-

JHON DAVIS, ERT UNIT OF  
WESTCHESTER COUNTY JAIL, SGT.  
DAVIS, KEITH CAMERA, and SGT.  
CONKLING,

Defendants.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 05/15/2024

18-CV-11547 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiff Jordan H. Moore, proceeding *pro se*, commenced the instant action on December 10, 2018 against Nurse Jan Gigi; Nurse Jan Veronica; C.C.S. Medical; Sgt. Davis; John Doe Helmet #43; Assistant Warden Keith Camera; Sgt. Conkling #201; and Westchester County. (ECF No. 1.) On December 21, 2018, the Court issued an Order of Service: (1) dismissing claims against Nurse Jan Gigi, Nurse Jan Veronica, and C.C.S. Medical and (2) directing Plaintiff to file an Amended Complaint naming the John Doe defendant. (ECF No. 6.) On February 26, 2019, Service was effectuated on Defendants C.O. Westchester County, Sergeant Davis, Assistant Warden Keith Camera, and Sergeant Conkling (“Defendants”). (ECF Nos. 16-19.) On June 25, 2021, after over a year of inactivity in the case, the Court issued an Order to Show Cause due to Plaintiff’s alleged failure to prosecute. (ECF No. 28.) On July 22, 2021, Plaintiff wrote a letter in response to the Court, informing the Court that all his property, including his legal mail, had been lost during transfer to a different correctional facility. (ECF No. 29.) On July 23, 2021, the Court issued a memorandum endorsement advising Plaintiff that the Court would not dismiss the action for want of prosecution and that he should pursue default judgement against Defendants as they had not appeared or otherwise defended the action. (ECF No. 30.) On November 10, 2021 and December 8, 2021, the Court advised Plaintiff on pursuing default judgment against Defendants. (ECF Nos.

33, 35.) On June 16, 2022, after Plaintiff repeatedly failed to move for default judgment, the Court issued a memorandum endorsement warning Plaintiff that the Court will issue a *sua sponte* dismissal of the action for failure to prosecute if he failed to move for default judgment within 45 days of receipt of copies of the endorsement. (ECF No. 46.)

On August 8, 2022, Plaintiff moved for default judgment against Defendants. (ECF Nos. 47-50.) On August 10, 2022, the Clerk of Court entered a Certificate of Default as to Defendants. (ECF No. 52.) Plaintiff sent several letters to the Court over the next several months asking about next steps. (ECF Nos. 57-62.) On April 10, 2023, the Court issued a memorandum endorsement advising Plaintiff on advancing his application for default judgment. (ECF No. 63.) On April 24, 2023, Defendants filed an Answer to the Complaint. (ECF No. 64.) On September 18, 2023, with leave of the Court, Defendants filed a Motion to Vacate Default Judgment. (ECF No. 79.) As of the date of this Order, Plaintiff has not opposed Defendants' Motion.

A motion to vacate a default judgment is addressed to the sound discretion of the district judge. *United States v. Erdoss*, 440 F.2d 1221, 1223 (2d Cir. 1971), *cert. denied*, 404 U.S. 849 (1972); *Standard Newspapers, Inc. v. King*, 375 F.2d 115, 116 (2d Cir. 1967). Default judgments are typically viewed as a “severe sanction.” *See Cody v. Mello*, 59 F.3d 13, 15 (2d Cir. 1995). Since there is a strong preference in favor of resolving matters on the merits, when ruling on a motion to vacate a default judgment, the Court must resolve all doubts in favor of the moving party. *See N.Y. v. Green*, 420 F.3d 99, 104 (2d Cir. 2005). A court may relieve a party from a final judgment for “mistake, inadvertence, surprise, or excusable neglect.” Fed.R.Civ.P. 60(b)(1); *State St. Bank & Tr. Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 166 (2d Cir. 2004). With these principles in mind, Defendants' motion to vacate default judgment is GRANTED.

Pursuant to this Court's Order dated December 21, 2018, Plaintiff is directed to file an Amended Complaint naming the John Doe Defendant on or before June 14, 2024. The Amended

Complaint will replace, not supplement, the original Complaint. An Amended Civil Rights Complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an Amended Complaint, the Court will screen the Amended Complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendant and deliver all documents necessary to effect service to the U.S. Marshals Service.

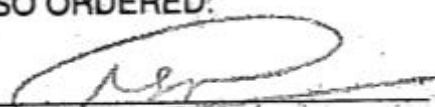
Defendants are directed to file an Answer or inform the Court of its intent to file a motion to dismiss Plaintiff's Amended Complaint on or before July 5, 2024. If Defendants file a motion to dismiss Plaintiff's Amended Complaint, they should do so according to the following briefing schedule:

- (1) Defendants' moving papers are to be served (not filed) on July 26, 2024;
- (2) Plaintiff's opposition papers are to be served (not filed) on August 26, 2024; and
- (3) Defendants' reply papers are to be served on September 16, 2024.

All motion papers are to be filed by Defendants, including Plaintiff's papers, on the reply date, September 16, 2024. The parties are directed to provide Chambers with two physical courtesy copies of their motion papers on the same date they are served on opposing counsel. Defendants are further directed to provide the Court with an electronic courtesy copy of the motion papers as they are served per this Court's local emergency civil rules.

The Clerk of Court is directed to vacate the Certificate of Default (ECF No. 52), to mail a copy of this Order and the docket sheet to Plaintiff at the address listed on ECF, and to show service on the docket.

Dated: May 15, 2024  
White Plains, NY

SO ORDERED:  
  
HON. NELSON S. ROMAN  
UNITED STATES DISTRICT JUDGE

---

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

Write the full name of each plaintiff.

\_\_\_\_ CV \_\_\_\_  
(Include case number if one has been  
assigned)

-against-

**COMPLAINT**

Do you want a jury trial?

☐ Yes ☐ No

---

Write the full name of each defendant. If you need more  
space, please write "see attached" in the space above and  
attach an additional sheet of paper with the full list of  
names. The names listed above must be identical to those  
contained in Section II.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

## I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

### A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

---

---

---

---

### B. If you checked Diversity of Citizenship

#### 1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, \_\_\_\_\_, is a citizen of the State of  
(Plaintiff's name)

\_\_\_\_\_  
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

\_\_\_\_\_.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, \_\_\_\_\_, is a citizen of the State of  
(Defendant's name)

\_\_\_\_\_  
or, if not lawfully admitted for permanent residence in the United States, a citizen or  
subject of the foreign state of

\_\_\_\_\_  
If the defendant is a corporation:

The defendant, \_\_\_\_\_, is incorporated under the laws of  
the State of \_\_\_\_\_

and has its principal place of business in the State of \_\_\_\_\_

or is incorporated under the laws of (foreign state) \_\_\_\_\_

and has its principal place of business in \_\_\_\_\_.

If more than one defendant is named in the complaint, attach additional pages providing  
information for each additional defendant.

## II. PARTIES

### A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional  
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

Defendant 2:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

Defendant 3:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

Place(s) of occurrence:

Date(s) of occurrence:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.



---

---

---

---

---

---

---

---

---

---

---

**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

---

---

---

---

---

**IV. RELIEF**

State briefly what money damages or other relief you want the court to order.

---

---

---

---

---

**V. PLAINTIFF'S CERTIFICATION AND WARNINGS**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature
First Name	Middle Initial
	Last Name
Street Address	
County, City	State
	Zip Code
Telephone Number	Email Address (if available)

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes   ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.



**United States District Court  
Southern District of New York**

## **Pro Se (Nonprisoner) Consent to Receive Documents Electronically**

Parties who are not represented by an attorney and are not currently incarcerated may choose to receive documents in their cases electronically (by e-mail) instead of by regular mail. Receiving documents by regular mail is still an option, but if you would rather receive them only electronically, you must do the following:

1. Sign up for a PACER login and password by contacting PACER<sup>1</sup> at [www.pacer.uscourts.gov](http://www.pacer.uscourts.gov) or 1-800-676-6856;
2. Complete and sign this form.

If you consent to receive documents electronically, you will receive a Notice of Electronic Filing by e-mail each time a document is filed in your case. After receiving the notice, you are permitted one “free look” at the document by clicking on the hyperlinked document number in the e-mail.<sup>2</sup> Once you click the hyperlink and access the document, you may not be able to access the document for free again. After 15 days, the hyperlink will no longer provide free access. Any time that the hyperlink is accessed after the first “free look” or the 15 days, you will be asked for a PACER login and may be charged to view the document. For this reason, *you should print or save the document during the “free look” to avoid future charges.*

### **IMPORTANT NOTICE**

Under Rule 5 of the Federal Rules of Civil Procedure, Local Civil Rule 5.2, and the Court’s Electronic Case Filing Rules & Instructions, documents may be served by electronic means. If you register for electronic service:

1. You will no longer receive documents in the mail;
2. If you do not view and download your documents during your “free look” and within 15 days of when the court sends the e-mail notice, you will be charged for looking at the documents;
3. This service does *not* allow you to electronically file your documents;
4. It will be your duty to regularly review the docket sheet of the case.<sup>3</sup>

---

<sup>1</sup> Public Access to Court Electronic Records (PACER) ([www.pacer.uscourts.gov](http://www.pacer.uscourts.gov)) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator over the internet.

<sup>2</sup> You must review the Court’s actual order, decree, or judgment and not rely on the description in the email notice alone. See ECF Rule 4.3

<sup>3</sup> The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, using PACER or you can use one of the public access computers available in the Clerk’s Office at the Court.

## CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1. I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;
2. I have established a PACER account;
3. I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;
4. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;
5. I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and
6. I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

### Civil case(s) filed in the Southern District of New York:

**Note:** This consent will apply to all cases that you have filed in this court, so please list all of your pending and terminated cases. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

---

---

---

Name (Last, First, MI)

---

Address

City

State

Zip Code

---

Telephone Number

E-mail Address

---

Date

Signature

### Return completed form to:

Pro Se Intake Unit (Room 200)  
500 Pearl Street  
New York, NY 10007